



Oct 05, 2023

M. Mtenkas

Landlord and Tenant Board

**Order under Section 69
Residential Tenancies Act, 2006**

Citation: 13011666 Canada Inc. v Robidoux, 2023 ONLTB 61498

Date: 2023-10-05

File Number: LTB-L-079217-22

In the matter of: Unit 6, 581 Phillip Street East
Gravenhurst ON P1P1M3

Between: 13011666 Canada Inc.

Landlord

And

Emily Robidoux

Tenant

13011666 Canada Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Emily Robidoux (the 'Tenant') because the unit was given to the Tenant for the term of the Tenant's employment which has now ended. The Landlord also claimed compensation for use of the unit from the termination date to the move out date, and the L2 filing fee.

This application was heard by videoconference on August 22, 2023.

The Landlord's Agent and company director Minna Hu attended the hearing. The Landlord's Legal Representative Nikita Jain, and the Tenant also attended the hearing.

Preliminary Issues:

1. The first preliminary issue raised with the parties was with respect to which version of the L2 applications which were filed should be relied on. The Landlord's Legal Representative indicated that the L2 application with the word "Amended" written in blue handwriting was the correct application. This application also sought to amend the name of the rental unit address, to say, "Phillip Street East" and that amendment was granted.
2. The second issue raised with the parties was with respect to whether the N8 and Certificate of Service had been properly filed with the Board before the hearing. The Landlord's Legal Representative indicated that these were filed with an evidence brief sent into the Board by email on August 14, 2023. The Tenant agreed that she had been served with these documents prior to the hearing.

Background:

3. The rental unit is a self-enclosed residence with its own kitchen and bathroom that the Tenant rents alone. It is located in an area offsite from Inn at the Falls which is the Landlord company. It has a cottage-like exterior appearance, and it is situated among other similar rental units which the Landlord also owns.

4. The parties agree that the Tenant began her employment at the Landlord company "Inn at the Falls" on or around July 10, 2022 in the role of Housekeeping Attendant and that her employment was terminated on October 16, 2022.
5. The parties agree that the Tenant moved into the rental unit on July 13, 2022.
6. Following the termination of her employment, the Landlord asked the Tenant to vacate the unit within 7 days in accordance with the terms of a Short-Term Rental Agreement that the parties had signed. The Landlord's Agent further submitted that she gave the Tenant two weeks to move out, but that the Tenant continued to remain in the unit beyond that span of time.
7. In response to the Tenant remaining in the rental unit, the Landlord then served the Tenant with an N8 Notice with reason 3 checked off, pursuant to section 58(1)(3) of the *Residential Tenancies Act, 2006* (the 'Act') which states:

Notice at end of term or period, additional grounds

58 (1) A landlord may give a tenant notice of termination of their tenancy on any of the following grounds:

3. The tenant was an employee of an employer who provided the tenant with the rental unit during the tenant's employment and the employment has terminated.
8. A valid N8 Notice of termination was served on the Tenant in person on December 8, 2022 which had a termination date of February 28, 2023. Pursuant to section 44 of the Act, the Tenant received the minimum required notice of 60 days from the date of service to the termination date.
 9. Following service of the N8, the Landlord's Agent also sought rental arrears from the Tenant under LTB application LTB-L-011889-23 which resulted in an L9 order for rent arrears that has an issuance date of May 26, 2023. This order states that the lawful rent of the tenancy is \$1,250.00 and is due on the first day of each month. The Landlord's Agent stated that this order states that arrears are payable for up to and including April of 2023, and that the Tenant has not accumulated new arrears for the period starting in May of 2023 and up to this hearing's date of August 22, 2023. As such, the Landlord is not claiming daily compensation for use of the unit in this matter but is only seeking termination of the tenancy and the L2 filing fee of \$186.00.
 10. The Landlord's Agent argues that the tenancy was offered to the Tenant in the course of her employment and that the tenancy was made conditional on the Tenant remaining employed with the Landlord company. Due to the Tenant's employment having been terminated on October 16, 2022, the Landlord's Agent submits that they are entitled to evict the Tenant pursuant to section 58(1)(3) of the Act.
 11. The Tenant argues that her tenancy remains independent of her employment status and that she is entitled to continue living in the rental unit.

12. The only issue to decide in this application is whether the Tenant was provided with her rental unit during the course of her employment and that as such, the tenancy can be terminated pursuant to section 58(1)(3) of the Act.

Evidence and submissions of Minna Hu:

13. The Landlord's Agent submitted that when the Tenant first came to work at the Inn, she did not have a place to live, and so housing was offered to her so that she could commence her employment, with rent being deducted directly from the Tenant's paycheque.
14. I note that the Landlord's Agent submitted a "Short Term Rental Agreement" (the "Rental Agreement") into evidence in support of her position, which was executed by the parties on August 22, 2022. Important to note is that this lease agreement is backdated with respect to its start date, listing the term of the agreement as commencing on July 13, 2022 and ending on December 31, 2022. This agreement is also not on the Standard Form Ontario Lease and contains a number of clauses which run in conflict with the Act. However, in accordance with section 202 of the Act, in making findings on an application, I am required to ascertain the real substance of the transaction, despite its outward form.
15. The Landlord's Agent also gave evidence that at the time the Rental Agreement was signed, the Landlord was of the opinion that the Act might not apply to the tenancy but that subsequently, the Landlord has decided to make use of the Act in order to pursue an eviction under section 58(1)(3).
16. When asked if she agreed that the tenancy was subject to the Act, the Landlord's Agent stated that she didn't think so, but she did not put forward any arguments as to whether the tenancy falls within a specific exemption. The Landlord cannot have it both ways, and I note that the Landlord has already made use of the Act and assumed its jurisdiction in order to seek out an order for rental arrears. Ultimately, the Landlord's Legal Representative clarified her client's position and stated that the Landlord's application is predicated on making use of section 58(1)(3) of the Act.

Evidence and submissions of Emily Robidoux:

17. The Tenant submitted four images into evidence. The first image was of a text message sent to the Tenant by the Landlord's property manager, asking for permission to show the rental unit to prospective tenants, following the termination of her employment. The second image was of a handwritten letter drafted by a neighbour who also lives in one of the properties located at 581 Phillip Street East, stating that he resides there despite not being an employee of the Landlord. The third image was of a text message sent to the Tenant by Ms. Hu on October 6, 2022, which asks the Tenant if she might be interested in a room rental instead of a full unit. The fourth image submitted was of the exterior of the rental unit. The Tenant stated that the first three images are proof that the unit she rents was not intended to be a staffing unit.
18. The Tenant testified that she moved into the rental unit on July 13, 2022, that the Rental Agreement was drafted on August 18, 2022, and that the parties signed the Rental Agreement on August 22, 2022.

19. The Tenant also made reference to an original version of the rental agreement having been provided to her on August 13, 2022 but I note that an agreement with that date was not submitted into evidence.

Determinations:

20. As the tenancy had already commenced on July 13, 2022 and prior to the Rental Agreement being drafted, a question arises about whether the Rental Agreement reflects the original intentions of the parties or whether the Rental Agreement was a modification of the parties' original intentions.
21. The Tenant did not present evidence at the hearing to suggest that the agreement she had in place with the Landlord as of the move in date differed from the terms of the Rental Agreement. Thus, based on the testimony of the Landlord's Agent regarding her intentions when hiring the Tenant, and the Tenant's testimony about having seen a prior version of the Rental Agreement on August 13, 2022, I find on a balance of probabilities, that the parties were engaged in the process of formalizing their arrangement and reducing it to writing in the time leading up to the execution of the Rental Agreement. Pursuant to section 2 of the Act, a "tenancy agreement" means a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit, and therefore the collective intentions and negotiations of the parties needs to be assessed as a whole.
22. The Rental Agreement itself is also explicit about the parties' intentions under clause 22 – noting that the tenancy will come to an end upon the Tenant's resignation or termination of her employment. While agreements to terminate a tenancy are void when entered into as a condition of entering into a tenancy agreement under section 37(5) of the Act, I find that the Tenant understood this term to mean that the Landlord would have the right to pursue an eviction if she ceased to be employed and that there was no promise that the tenancy might continue independent of her employment. In this case, the Landlord ultimately provided the Tenant with the required 60 days notice of termination as required under section 58(1)(3).
23. With respect to the text message submitted into evidence by the Tenant regarding the potential listing of the rental unit for rent and the Tenant's assertion that the unit is therefore not a staffing unit, I note that section 58(1)(3) of the Act does not require that the unit be permanently designated as a staffing unit in order for a landlord to make use of that section. There is also no explicit requirement in the Act as a whole that the location of the unit be in the same place as where the employment is based. Though other case law does reference the historical usage of a unit, and the close proximity of a tenant's unit to where they perform their work, these are only two of several relevant considerations to take into account when assessing whether a unit was offered in the course of a tenant's employment. In this case, the Landlord's Agent has noted that they typically make units available to their staff. In addition, while the unit is located off-site from the Inn, I find that this arrangement is reasonable given that the Inn is a small-scale business, and it would be financially impractical for the Landlord to use up space at the Inn itself to house all of its staff.

24. While the Tenant did put forward evidence about another tenant who resides at 581 Phillip Street East despite not being employed by the Landlord, I do not find that the classification of that tenancy is relevant to the intentions of the parties in this case, just as the arrangements of different tenants within a large building complex can differ and not bind one another in law.
25. In terms of whether the Landlord intended to list the unit on the open market or use it as a staffing unit after the Tenant's employment was terminated, I find it reasonable that the Landlord's intentions could have changed over time depending on the immediate staffing needs at the Inn.
26. With respect to subsection 58(1)(3), the implication in this clause is that there is a nexus between a tenant's employment and their unit, which would otherwise differentiate the tenancy from other rental arrangements that are not subject to this section of the Act, and which afford tenants more protection. In this case, I find that the Tenant understood the connection with her employment and that her ability to pay rent and remain in good standing as a tenant would be tied to it.
27. Given my assessment of the factors outlined above, I find that the Landlord has proven on a balance of probabilities that the Tenant was an employee of the Landlord and that the Landlord provided the Tenant with the rental unit in the course of their employment. Thus, pursuant to section 58(1)(3) of the Act, the Landlord is entitled to seek out a termination of the tenancy due to the Tenant's employment having been terminated on October 16, 2022.

Relief from Eviction:

28. When asked if she was aware of any reason to delay or deny an eviction under section 83 of the Act, the Landlord's Legal Representative indicated that she was not aware of any relevant circumstances. The Landlord's Legal Representative pointed to the order for arrears and noted that the Landlord has not currently recovered all of those funds, and that as a small business they require the unit immediately in order to offer it to current housekeeping staff.
29. The Tenant stated that she lives alone in the rental unit and is currently employed as a personal support worker. In closing submissions, she indicated that there is a lack of affordable housing in the area where she currently resides and if she were evicted, she would be facing homelessness due to not having any family close by. The Tenant stated that she has also researched rental units in other cities though their cost is much higher than what she currently pays. In addition, the Tenant submitted that she would like up to six months to source alternative housing if the tenancy were terminated.
30. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before October 16, 2023.
2. If the unit is not vacated on or before October 16, 2023, then starting October 17, 2023 the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after October 17, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the \$186.00 filing fee on or before October 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 17, 2023 at 7.00% annually on the balance outstanding.

October 5, 2023
Date Issued



Madeline Ntoukas
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on April 17, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.